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Via www.nlrb.gov and
U.S. First Class Mail

December 19, 2017

National Labor Relations Board
c/o Roxanne Rothschild
Deputy Executive Secretary, NLRB
1015 Half St. SE
Washington, DC 20570

Dear Members of the National Labor Relations Board:

RE: Comments on National Labor Relations Board Request for Information titled
"Representation-Case Procedures," RIN 3142-AA12, 82 *Fed. Reg.* 58783
(December 14, 2017)

The National Federation of Independent Business (NFIB) submits these comments in response to the National Labor Relations Board (NLRB) Request for Information titled "Representation-Case Procedures" (RFI) and published in the *Federal Register* of December 14, 2017. NFIB is an incorporated nonprofit association with approximately 300,000 members across America. NFIB protects and advances the ability of Americans to own, operate, and grow their businesses and, in particular, ensures that the governments of the United States and the fifty states hear the voice of small business as they formulate public policies. NFIB has many members covered by the National Labor Relations Act (NLRA). The RFI posed three questions, to which the NFIB responds as indicated below.

NLRB RFI Question 1: Should the 2014 Election Rule be retained without change?

NFIB Response to Question 1: No, the NLRB should not retain the 2014 Election Rule (see 79 *Fed. Reg.* 74308 (December 15, 2014)) without change. In particular, the NLRB should revise the rule to take account of the needs of America's small businesses.

NLRB RFI Question 2: Should the 2014 Election Rule be retained with modifications? If so, what should be modified?

NFIB Response to Question 2: The NLRB should replace the 2014 Election Rule procedures with procedures that: (a) follow the NLRA and other applicable provisions of law, (b) protect the freedom of speech, right to petition, and right to due process of businesses and their owners, (c) facilitate free markets, and (d) take account of the special needs of small businesses.

While large corporations often have the large staffs of lawyers and labor advisors and the substantial financial resources necessary to deal with disputes that arise under the NLRA, in representation elections and related NLRB procedures, or in ancillary proceedings, small businesses most assuredly do not. As Congress has said, “uniform Federal regulatory and reporting requirements have in numerous instances imposed unnecessary and disproportionately burdensome demands including legal, accounting and consulting costs upon small businesses, small organizations, and small governmental jurisdictions with limited resources” (Sec. 2(a)(3) of the Regulatory Flexibility Act, Public Law 96-354).

The NLRB should look for ways to make its representation-election procedures less burdensome on small businesses. As Congress has noted, “alternative regulatory approaches which do not conflict with the stated objectives of applicable statutes may be available which minimize the significant economic impact of rules on small businesses, small organizations, and small governmental jurisdictions” (Sec. 2(a)(7) of Public Law 96-354).

The NLRB should ensure that its regulations protect small businesses and their owners against pressure to abandon their legal rights that arises simply because small businesses cannot afford to protect their rights against attacks upon them supported by well-funded organizations. Indeed, the purpose for which Congress enacted the Regulatory Flexibility Act (Public Law 96-354) was “to establish as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation” (Sec. 2(b) of Public Law 96-354).

NLRB RFI Question 3: Should the 2014 Election Rule be rescinded? If so, should the Board revert to the Election Regulations that were in effect prior to the 2014 Election Rule’s adoption, or should the Board make changes to the prior Election Regulations? If the Board should make changes to the prior Election Regulations, what should be changed?

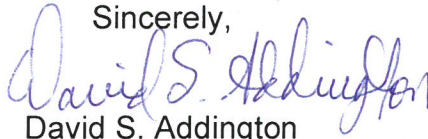
NFIB Response to Question 3: The choice between revoking and replacing the 2014 Election Rule, or making substantial modifications to the 2014 Election Rule, is largely a matter of format, as either process could yield a good (or bad) rulemaking result. From NFIB’s perspective as the voice of small business, NLRB should give high priority to revision of the Representation-Case Procedures to take account of the needs of small business. Among other things, small businesses should not face under the procedures short deadlines for action, legal

consequences without prior notice and an opportunity to be heard, burdensome requirements to produce information, intrusions onto their property or into the privacy of their employees, or burdens (such as snap elections) on communicating with their employees in relation to the employees' exercise of their right to refrain from unionizing under section 7 of the NLRA (29 U.S.C. 157). The NLRB should establish a second track of representation-case procedures, which would be for cases involving small businesses and would be substantially less costly, intrusive, and burdensome for an employer than the other track.

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NFIB appreciates the opportunity to comment in response to the Request for Information and especially appreciates the willingness of the National Labor Relations Board to examine whether the burdens its regulations impose on the public outweigh any benefits its regulations confer on the public.

Sincerely,



David S. Addington

Senior Vice President and General Counsel